

## Environmental Protection Agency

## § 89.516

force and effect of a final decision of the Administrator, as issued pursuant to § 89.515.

(4) If the Administrator determines that a genuine and substantial question of fact or law does exist with respect to any of the issues referred to in paragraphs (d)(1) and (d)(2) of this section, the Administrator will grant the request for a hearing and publish a notice of public hearing in the FEDERAL REGISTER or by such other means as the Administrator finds appropriate to provide notice to the public.

(e) *Filing and service.* (1) An original and two copies of all documents or papers required or permitted to be filed pursuant to this section and § 89.512(c) must be filed with the Hearing Clerk of the Agency. Filing is considered timely if mailed, as determined by the postmark, to the Hearing Clerk within the time allowed by this section and § 89.512(b). If filing is to be accomplished by mailing, the documents must be sent to the address set forth in the notice of public hearing referred to in paragraph (d)(4) of this section.

(2) To the maximum extent possible, testimony will be presented in written form. Copies of written testimony will be served upon all parties as soon as practicable prior to the start of the hearing. A certificate of service will be provided on or accompany each document or paper filed with the Hearing Clerk. Documents to be served upon the Director of the Engine Programs and Compliance Division must be sent by registered mail to: Director, Engine Programs and Compliance Division (6405-J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Service by registered mail is complete upon mailing.

(f) *Computation of time.* (1) In computing any period of time prescribed or allowed by this section, except as otherwise provided, the day of the act or event from which the designated period of time begins to run is not included. Saturdays, Sundays, and federal legal holidays are included in computing the period allowed for the filing of any document or paper, except that when the period expires on a Saturday, Sunday, or federal legal holiday, the period is

extended to include the next following business day.

(2) A prescribed period of time within which a party is required or permitted to do an act is computed from the time of service, except that when service is accomplished by mail, three days will be added to the prescribed period.

(g) *Consolidation.* The Administrator or the Presiding Officer in his discretion may consolidate two or more proceedings to be held under this section for the purpose of resolving one or more issues whenever it appears that consolidation will expedite or simplify consideration of these issues. Consolidation does not affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(h) *Hearing date.* To the extent possible hearings under § 89.512 will be scheduled to commence within 14 days of receipt of the application in § 89.512.

[59 FR 31335, June 17, 1994. Redesignated and amended at 63 FR 56996, 57020, Oct. 23, 1998]

### § 89.514 Hearing procedures.

The procedures provided in § 86.1014-84 (i) to (s) apply for hearings requested pursuant to § 89.512, suspension, revocation, or voiding of a certificate of conformity.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56996, Oct. 23, 1998]

### § 89.515 Appeal of hearing decision.

The procedures provided in § 86.1014-84 (t) to (aa) apply for appeals filed with respect to hearings held pursuant to § 89.514.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56996, Oct. 23, 1998]

### § 89.516 Treatment of confidential information.

The provisions for treatment of confidential information as described in § 89.7 apply.

[59 FR 31335, June 17, 1994. Redesignated at 63 FR 56996, Oct. 23, 1998]

**Pt. 89, Subpt. F, App. A**

**40 CFR Ch. I (7–1–04 Edition)**

**APPENDIX A TO SUBPART F OF PART 89—  
SAMPLING PLANS FOR SELECTIVE EN-  
FORCEMENT AUDITING OF NONROAD  
ENGINES**

**TABLE 1—SAMPLING PLAN CODE LETTER**

Annual engine family sales	Code letter
20–50 .....	AA <sup>1</sup>
20–99 .....	A
100–299 .....	B
300–299 .....	C
500 or greater .....	D

<sup>1</sup>A manufacturer may optionally use either the sampling plan for code letter “AA” or sampling plan for code letter “A” for Selective Enforcement Audits of engine families with annual sales between 20 and 50 engines. Additionally, the manufacturer may switch between these plans during the audit.

**TABLE 2—SAMPLING PLAN FOR CODE LETTER  
“AA”**

[Sample inspection criteria]

Stage	Pass No.	Fail No.
1 .....	( <sup>1</sup> )	( <sup>2</sup> )
2 .....	( <sup>1</sup> )	( <sup>2</sup> )
3 .....	0	( <sup>2</sup> )
4 .....	0	( <sup>2</sup> )
5 .....	1	5
6 .....	1	6
7 .....	2	6
8 .....	2	7
9 .....	3	7
10 .....	3	8
11 .....	4	8
12 .....	4	9
13 .....	5	9
14 .....	5	10
15 .....	6	10
16 .....	6	10
17 .....	7	10
18 .....	8	10
19 .....	8	10
20 .....	9	10

<sup>1</sup>Test sample passing not permitted at this stage.  
<sup>2</sup>Test sample failure not permitted at this stage.

**TABLE 3—SAMPLING PLAN FOR CODE LETTER  
“A”**

[Sample inspection criteria]

Stage	Pass No.	Fail No.
1 .....	( <sup>1</sup> )	( <sup>2</sup> )
2 .....	( <sup>1</sup> )	( <sup>2</sup> )
3 .....	( <sup>1</sup> )	( <sup>2</sup> )
4 .....	0	( <sup>2</sup> )
5 .....	0	( <sup>2</sup> )
6 .....	1	6
7 .....	1	7
8 .....	2	7
9 .....	2	8
10 .....	3	8
11 .....	3	8
12 .....	4	9
13 .....	5	10
14 .....	5	10
15 .....	6	11
16 .....	6	11
17 .....	7	12
18 .....	7	12

**TABLE 3—SAMPLING PLAN FOR CODE LETTER  
“A”—Continued**

[Sample inspection criteria]

Stage	Pass No.	Fail No.
19 .....	8	13
20 .....	8	13
21 .....	9	14
22 .....	10	14
23 .....	10	15
24 .....	11	15
25 .....	11	16
26 .....	12	16
27 .....	12	17
28 .....	13	17
29 .....	14	17
30 .....	16	17

<sup>1</sup>Test sample passing not permitted at this stage.  
<sup>2</sup>Test sample failure not permitted at this stage.

**TABLE 4—SAMPLING PLAN FOR CODE LETTER  
“B”**

[Sample Inspection Criteria]

Stage	Pass No.	Fail No.
1 .....	( <sup>1</sup> )	( <sup>2</sup> )
2 .....	( <sup>1</sup> )	( <sup>2</sup> )
3 .....	( <sup>1</sup> )	( <sup>2</sup> )
4 .....	( <sup>1</sup> )	( <sup>2</sup> )
5 .....	0	( <sup>2</sup> )
6 .....	1	6
7 .....	1	7
8 .....	2	7
9 .....	2	8
10 .....	3	8
11 .....	3	9
12 .....	4	9
13 .....	4	10
14 .....	5	10
15 .....	5	11
16 .....	6	12
17 .....	6	12
18 .....	7	13
19 .....	8	13
20 .....	8	14
21 .....	9	14
22 .....	9	15
23 .....	10	15
24 .....	10	16
25 .....	11	16
26 .....	11	17
27 .....	12	17
28 .....	12	18
29 .....	13	18
30 .....	13	19
31 .....	14	19
32 .....	14	20
33 .....	15	20
34 .....	16	21
35 .....	16	21
36 .....	17	22
37 .....	17	22
38 .....	18	22
39 .....	18	22
40 .....	21	22

<sup>1</sup>Test sample passing not permitted at this stage.  
<sup>2</sup>Test sample failure not permitted at this stage.

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**TABLE 5—SAMPLING PLAN FOR CODE LETTER  
“C”**

[Sample Inspection Criteria]

Stage	Pass No.	Fail No.
1 .....	(1)	(2)
2 .....	(1)	(2)
3 .....	(1)	(2)
4 .....	(1)	(2)
5 .....	0	(2)
6 .....	0	6
7 .....	1	7
8 .....	2	7
9 .....	2	8
10 .....	3	9
11 .....	3	9
12 .....	4	10
13 .....	4	10
14 .....	5	11
15 .....	5	11
16 .....	6	12
17 .....	6	12
18 .....	7	13
19 .....	7	13
20 .....	8	14
21 .....	8	14
22 .....	9	15
23 .....	10	15
24 .....	10	16
25 .....	11	16
26 .....	11	17
27 .....	12	17
28 .....	12	18
29 .....	13	18
30 .....	13	19
31 .....	14	19
32 .....	14	20
33 .....	15	20
34 .....	15	21
35 .....	16	21
36 .....	16	22
37 .....	17	22
38 .....	18	23
39 .....	18	23
40 .....	19	24
41 .....	19	24
42 .....	20	25
43 .....	20	25
44 .....	21	26
45 .....	21	27
46 .....	22	27
47 .....	22	27
48 .....	23	27
49 .....	23	27
50 .....	26	27

<sup>1</sup> Test sample passing not permitted at this stage.  
<sup>2</sup> Test sample failure not permitted at this stage.

**TABLE 6—SAMPLING PLAN FOR CODE LETTER  
“D”**

[Sample Inspection Criteria]

Stage	Pass No.	Fail No.
1 .....	(1)	(2)
2 .....	(1)	(2)
3 .....	(1)	(2)
4 .....	(1)	(2)
5 .....	0	(2)
6 .....	0	6
7 .....	1	7
8 .....	2	8
9 .....	2	8

**TABLE 6—SAMPLING PLAN FOR CODE LETTER  
“D”—Continued**

[Sample Inspection Criteria]

Stage	Pass No.	Fail No.
10 .....	3	9
11 .....	3	9
12 .....	4	10
13 .....	4	10
14 .....	5	11
15 .....	5	11
16 .....	6	12
17 .....	6	12
18 .....	7	13
19 .....	7	13
20 .....	8	14
21 .....	8	14
22 .....	9	15
23 .....	9	15
24 .....	10	16
25 .....	11	16
26 .....	11	17
27 .....	12	17
28 .....	12	18
29 .....	13	19
30 .....	13	19
31 .....	14	20
32 .....	14	20
33 .....	15	21
34 .....	15	21
35 .....	16	22
36 .....	16	22
37 .....	17	23
38 .....	17	23
39 .....	18	24
40 .....	18	24
41 .....	19	25
42 .....	19	26
43 .....	20	26
44 .....	21	27
45 .....	21	27
46 .....	22	28
47 .....	22	28
48 .....	23	29
49 .....	23	29
50 .....	24	30
51 .....	24	30
52 .....	25	31
53 .....	25	31
54 .....	26	32
55 .....	26	32
56 .....	27	33
57 .....	27	33
58 .....	28	33
59 .....	28	33
60 .....	32	33

<sup>1</sup> Test sample passing not permitted at this stage.  
<sup>2</sup> Test sample failure not permitted at this stage.

**Subpart G—Importation of  
Nonconforming Nonroad Engines**

**§ 89.601 Applicability.**

(a) Except where otherwise indicated, this subpart is applicable to nonroad engines for which the Administrator has promulgated regulations under this part prescribing emission standards and nonroad vehicles and equipment containing such nonroad engines that